
SENATE BILL 5810

State of Washington

62nd Legislature

2011 Regular Session

By Senators Kline, Keiser, Conway, and Kohl-Welles

Read first time 02/16/11. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to residential mortgage loan servicers; and
2 amending RCW 31.04.015 and 31.04.290.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 31.04.015 and 2010 c 35 s 1 are each amended to read
5 as follows:

6 The definitions set forth in this section apply throughout this
7 chapter unless the context clearly requires a different meaning.

8 (1) "Add-on method" means the method of precomputing interest
9 payable on a loan whereby the interest to be earned is added to the
10 principal balance and the total plus any charges allowed under this
11 chapter is stated as the loan amount, without further provision for the
12 payment of interest except for failure to pay according to loan terms.
13 The director may adopt by rule a more detailed explanation of the
14 meaning and use of this method.

15 (2) "Applicant" means a person applying for a license under this
16 chapter.

17 (3) "Borrower" means any person who consults with or retains a
18 licensee or person subject to this chapter in an effort to obtain or

1 seek information about obtaining a loan, regardless of whether that
2 person actually obtains such a loan.

3 (4) "Depository institution" has the same meaning as in section 3
4 of the federal deposit insurance act on July 26, 2009, and includes
5 credit unions.

6 (5) "Director" means the director of financial institutions.

7 (6) "Federal banking agencies" means the board of governors of the
8 federal reserve system, comptroller of the currency, director of the
9 office of thrift supervision, national credit union administration, and
10 federal deposit insurance corporation.

11 (7) "Individual servicing a mortgage loan" means a person on behalf
12 of a lender or servicer licensed by this state, or a person acting on
13 behalf of a federally chartered or licensed financial institution or
14 its affiliate, who collects or receives payments including payments of
15 principal, interest, escrow amounts, and other amounts due, on existing
16 obligations due and owing to the licensed lender or servicer or
17 financial institution for a residential mortgage loan when the borrower
18 is in default, or in reasonably foreseeable likelihood of default,
19 working with the borrower and the licensed lender or servicer or
20 financial institution, collects data and makes decisions necessary to
21 modify either temporarily or permanently certain terms of those
22 obligations, or otherwise finalizing collection through the foreclosure
23 process.

24 (8) "Insurance" means life insurance, disability insurance,
25 property insurance, involuntary unemployment insurance, and such other
26 insurance as may be authorized by the insurance commissioner.

27 (9) "License" means a single license issued under the authority of
28 this chapter with respect to a single place of business.

29 (10) "Licensee" means a person to whom one or more licenses have
30 been issued.

31 (11) "Loan" means a sum of money lent at interest or for a fee or
32 other charge and includes both open-end and closed-end loan
33 transactions.

34 (12) "Loan processor" means an individual who performs clerical or
35 support duties as an employee at the direction of and subject to the
36 supervision and instruction of a person licensed, or exempt from
37 licensing, under chapter 19.146 RCW.

1 (13) "Making a loan" means advancing, offering to advance, or
2 making a commitment to advance funds to a borrower for a loan.

3 (14) "Mortgage broker" means the same as defined in RCW 19.146.010,
4 except that for purposes of this chapter, a licensee or person subject
5 to this chapter cannot receive compensation as both a consumer loan
6 licensee making the loan and as a consumer loan licensee acting as the
7 mortgage broker in the same loan transaction.

8 (15)(a) "Mortgage loan originator" means an individual who for
9 compensation or gain (i) takes a residential mortgage loan application,
10 or (ii) offers or negotiates terms of a residential mortgage loan.
11 "Mortgage loan originator" does not include any individual who performs
12 purely administrative or clerical tasks; and does not include a person
13 or entity solely involved in extensions of credit relating to timeshare
14 plans, as that term is defined in section 101(53D) of Title 11, United
15 States Code. For the purposes of this definition, administrative or
16 clerical tasks means the receipt, collection, and distribution of
17 information common for the processing of a loan in the mortgage
18 industry and communication with a consumer to obtain information
19 necessary for the processing of a residential mortgage loan.

20 (b) "Mortgage loan originator" also includes an individual who for
21 compensation or gain performs residential mortgage loan modification
22 services or holds himself or herself out as being able to perform
23 residential mortgage loan modification services.

24 (c) "Mortgage loan originator" does not include a person or entity
25 that only performs real estate brokerage activities and is licensed or
26 registered in accordance with applicable state law, unless the person
27 or entity is compensated by a lender, a mortgage broker, or other
28 mortgage loan originator or by any agent of such a lender, mortgage
29 broker, or other mortgage loan originator. For the purposes of chapter
30 120, Laws of 2009, the term "real estate brokerage activity" means any
31 activity that involves offering or providing real estate brokerage
32 services to the public, including:

33 (i) Acting as a real estate agent or real estate broker for a
34 buyer, seller, lessor, or lessee of real property;

35 (ii) Bringing together parties interested in the sale, purchase,
36 lease, rental, or exchange of real property;

37 (iii) Negotiating, on behalf of any party, any portion of a

1 contract relating to the sale, purchase, lease, rental, or exchange of
2 real property, other than in connection with providing financing with
3 respect to such a transaction;

4 (iv) Engaging in any activity for which a person engaged in the
5 activity is required to be registered or licensed as a real estate
6 agent or real estate broker under any applicable law; and

7 (v) Offering to engage in any activity, or act in any capacity,
8 described in (c)(i) through (iv) of this subsection.

9 (d) This subsection does not apply to an individual servicing a
10 mortgage loan before July 1, 2011.

11 (e) This subsection does not apply to employees of a housing
12 counseling agency approved by the United States department of housing
13 and urban development unless the employees of a housing counseling
14 agency are required under federal law to be individually licensed as
15 mortgage loan originators.

16 (16) "Nationwide mortgage licensing system and registry" means a
17 mortgage licensing system developed and maintained by the conference of
18 state bank supervisors and the American association of residential
19 mortgage regulators for the licensing and registration of mortgage loan
20 originators.

21 (17) "Officer" means an official appointed by the company for the
22 purpose of making business decisions or corporate decisions.

23 (18) "Person" includes individuals, partnerships, associations,
24 limited liability companies, limited liability partnerships, trusts,
25 corporations, and all other legal entities.

26 (19) "Principal" means any person who controls, directly or
27 indirectly through one or more intermediaries, alone or in concert with
28 others, a ten percent or greater interest in a partnership; company;
29 association or corporation; or a limited liability company, and the
30 owner of a sole proprietorship.

31 (20) "Registered mortgage loan originator" means any individual who
32 meets the definition of mortgage loan originator and is an employee of
33 a depository institution; a subsidiary that is owned and controlled by
34 a depository institution and regulated by a federal banking agency; or
35 an institution regulated by the farm credit administration and is
36 registered with, and maintains a unique identifier through, the
37 nationwide mortgage licensing system and registry.

1 (21) "Residential mortgage loan" means any loan primarily for
2 personal, family, or household use that is secured by a mortgage, deed
3 of trust, or other equivalent consensual security interest on a
4 dwelling, as defined in section 103(v) of the truth in lending act, or
5 residential real estate upon which is constructed or intended to be
6 constructed a dwelling.

7 (22) "Residential mortgage loan modification" means a change in one
8 or more of a residential mortgage loan's terms or conditions. Changes
9 to a residential mortgage loan's terms or conditions include but are
10 not limited to forbearances; repayment plans; changes in interest
11 rates, loan terms, or loan types; capitalizations of arrearages; or
12 principal reductions.

13 (23) "Residential mortgage loan modification services" includes
14 negotiating, attempting to negotiate, arranging, attempting to arrange,
15 or otherwise offering to perform a residential mortgage loan
16 modification. "Residential mortgage loan modification services" also
17 includes the collection of data for submission to an entity performing
18 mortgage loan modification services. "Residential mortgage loan
19 modification services" do not include actions by individuals servicing
20 a mortgage loan before July 1, 2011.

21 (24) "S.A.F.E. act" means the secure and fair enforcement for
22 mortgage licensing act of 2008, Title V of the housing and economic
23 recovery act of 2008 ("HERA"), P.L. 110-289, effective July 30, 2008.

24 (25) "Senior officer" means an officer of a licensee at the vice
25 president level or above.

26 (26) "Service or servicing a loan" means on behalf of the lender or
27 investor of a residential mortgage loan or on behalf of a federally
28 chartered or licensed financial institution or its affiliate: (a)
29 Collecting or receiving payments on existing obligations due and owing
30 to the lender or investor or financial institution, including payments
31 of principal, interest, escrow amounts, and other amounts due; (b)
32 collecting fees due to the servicer; (c) working with the borrower and
33 the licensed lender or servicer or financial institution to collect
34 data and make decisions necessary to modify certain terms of those
35 obligations either temporarily or permanently; (d) otherwise finalizing
36 collection through the foreclosure process; or (e) servicing a reverse
37 mortgage loan.

1 (27) "Service or servicing a reverse mortgage loan" means, pursuant
2 to an agreement with the owner of a reverse mortgage loan:
3 Calculating, collecting, or receiving payments of interest or other
4 amounts due; administering advances to the borrower; and providing
5 account statements to the borrower or lender.

6 (28) "Simple interest method" means the method of computing
7 interest payable on a loan by applying the annual percentage interest
8 rate or its periodic equivalent to the unpaid balances of the principal
9 of the loan outstanding for the time outstanding with each payment
10 applied first to any unpaid penalties, fees, or charges, then to
11 accumulated interest, and the remainder of the payment applied to the
12 unpaid balance of the principal until paid in full. In using such
13 method, interest shall not be payable in advance nor compounded, except
14 that on a loan secured by real estate, a licensee may collect at the
15 time of the loan closing up to but not exceeding forty-five days of
16 prepaid interest. The prohibition on compounding interest does not
17 apply to reverse mortgage loans made in accordance with the Washington
18 state reverse mortgage act. The director may adopt by rule a more
19 detailed explanation of the meaning and use of this method.

20 (29) "Third-party residential mortgage loan modification services"
21 means residential mortgage loan modification services offered or
22 performed by any person other than the owner or servicer of the loan.

23 (30) "Third-party service provider" means any person other than the
24 licensee or a mortgage broker who provides goods or services to the
25 licensee or borrower in connection with the preparation of the
26 borrower's loan and includes, but is not limited to, credit reporting
27 agencies, real estate brokers or salespersons, title insurance
28 companies and agents, appraisers, structural and pest inspectors, or
29 escrow companies.

30 (31) "Unique identifier" means a number or other identifier
31 assigned by protocols established by the nationwide mortgage licensing
32 system and registry.

33 **Sec. 2.** RCW 31.04.290 and 2010 c 35 s 9 are each amended to read
34 as follows:

35 (1) A residential mortgage loan servicer must comply with the
36 following requirements:

37 (a) The requirements of chapter 19.148 RCW;

1 (b) Any fee that is assessed by a servicer must be assessed within
2 forty-five days of the date on which the fee was incurred and must be
3 explained clearly and conspicuously in a statement mailed to the
4 borrower at the borrower's last known address no more than thirty days
5 after assessing the fee;

6 (c) All amounts received by a servicer on a residential mortgage
7 loan at the address where the borrower has been instructed to make
8 payments must be accepted and credited, or treated as credited, within
9 one business day of the date received, provided that the borrower has
10 provided sufficient information to credit the account. If a servicer
11 uses the scheduled method of accounting, any regularly scheduled
12 payment made prior to the scheduled due date must be credited no later
13 than the due date. If any payment is received and not credited, or
14 treated as credited, the borrower must be notified of the disposition
15 of the payment within ten business days by mail at the borrower's last
16 known address. The notification must identify the reason the payment
17 was not credited or treated as credited to the account, as well as any
18 actions the borrower must take to make the residential mortgage loan
19 current;

20 (d) Any servicer that exercises the authority to collect escrow
21 amounts on a residential mortgage loan held for the borrower for
22 payment of insurance, taxes, and other charges with respect to the
23 property shall collect and make all such payments from the escrow
24 account and ensure that no late penalties are assessed or other
25 negative consequences result for the borrower;

26 (e) The servicer shall make reasonable attempts to comply with a
27 borrower's request for information about the residential mortgage loan
28 account and to respond to any dispute initiated by the borrower about
29 the loan account. The servicer:

30 (i) Must maintain written or electronic records of each written
31 request for information regarding a dispute or error involving the
32 borrower's account until the residential mortgage loan is paid in full,
33 sold, or otherwise satisfied;

34 (ii) Must provide a written statement to the borrower within
35 fifteen business days of receipt of a written request from the
36 borrower. The borrower's request must include the name and account
37 number, if any, of the borrower, a statement that the account is or may
38 be in error, and sufficient detail regarding the information sought by

1 the borrower to permit the servicer to comply. At a minimum, the
2 servicer's response to the borrower's request must include the
3 following information:

4 (A) Whether the account is current or, if the account is not
5 current, an explanation of the default and the date the account went
6 into default;

7 (B) The current balance due on the residential mortgage loan,
8 including the principal due, the amount of funds, if any, held in a
9 suspense account, the amount of the escrow balance known to the
10 servicer, if any, and whether there are any escrow deficiencies or
11 shortages known to the servicer;

12 (C) The identity, address, and other relevant information about the
13 current holder, owner, or assignee of the residential mortgage loan;
14 and

15 (D) The direct telephone number and mailing address of a servicer
16 representative who will serve as the direct point of contact for the
17 borrower with the information and authority to answer questions and
18 resolve disputes; and

19 (iii) May charge a fee for preparing and furnishing the statement
20 in (e)(ii) of this subsection not exceeding thirty dollars per
21 statement; (~~and~~)

22 (f) Promptly correct any errors and refund any fees assessed to the
23 borrower resulting from the servicer's error;

24 (g) Maintain a caseload that provides the servicer the opportunity
25 to engage in effective loss mitigation;

26 (h) Disclose to the primary lender when the servicer or its
27 affiliate owns a subsequent lien;

28 (i) Reduce subordinate liens pro rata to any change in the first
29 mortgage;

30 (j) Foreclose in the servicer's own name or that of the lender; and

31 (k) Provide the borrower with a complete chain of title and note
32 transfer history in the notice of default.

33 (2) In addition to the statement in subsection (1)(e)(ii) of this
34 section, a borrower may request more detailed information from a
35 servicer, and the servicer must provide the information within fifteen
36 business days of receipt of a written request from the borrower. The
37 request must include the name and account number, if any, of the
38 borrower, a statement that the account is or may be in error, and

1 provide sufficient detail to the servicer regarding information sought
2 by the borrower. If requested by the borrower this statement must
3 include:

4 (a) A copy of the original note, or if unavailable, an affidavit of
5 lost note; and

6 (b) A statement that identifies and itemizes all fees and charges
7 assessed under the loan transaction and provides a full payment history
8 identifying in a clear and conspicuous manner all of the debits,
9 credits, application of and disbursement of all payments received from
10 or for the benefit of the borrower, and other activity on the
11 residential mortgage loan including escrow account activity and
12 suspense account activity, if any. The period of the account history
13 shall cover at a minimum the two-year period prior to the date of the
14 receipt of the request for information. If the servicer has not
15 serviced the residential mortgage loan for the entire two-year time
16 period the servicer shall provide the information going back to the
17 date on which the servicer began servicing the home loan, and identify
18 the previous servicer, if known. If the servicer claims that any
19 delinquent or outstanding sums are owed on the home loan prior to the
20 two-year period or the period during which the servicer has serviced
21 the residential mortgage loan, the servicer shall provide an account
22 history beginning with the month that the servicer claims any
23 outstanding sums are owed on the residential mortgage loan up to the
24 date of the request for the information. The borrower may request
25 annually one statement free of charge.

26 NEW SECTION. **Sec. 3.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

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